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Before the
Federal Communications Commission
Washington, D.C. 20554

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MAR 13 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 00-244

In the Matter of)

Definition of Radio Markets)

To: The Commission

REPLY COMMENTS OF MBC GRAND, INC.

MBC Grand Broadcasting, Inc. ("MBC Grand"), through counsel, hereby submits this brief reply to various of the Comments filed in response to the FCC's *Notice of Proposed Rule Making*, FCC 00-427, released December 13, 2000 (the "*NPRM*"), in the above-referenced proceeding.

A total of twenty parties filed comments. Eighteen directly opposed the FCC's proposal to revise its definition of radio markets for purposes of the multiple ownership rules and thereby to reduce, in some cases, the number of stations a single entity may own, operate or control. Only one party supported the proposal. A substantial majority of the commenters agreed with MBC Grand (Comments, p. 5) that the proposed changes are beyond the FCC's statutory authority. E.g., Comments of Entravision Holdings, LLC, p. 3; Comments of the National Association of Broadcasters, pp. 3-4; Comments of Cox Radio, Inc., pp. 4-6; Comments of Cumulus Media, Inc., pp. 3-5; Comments of Clear Channel Communications, Inc., p. 5; Comments of Aurora Communications, LLC, p. 23; Comments of The Walt Disney Company, pp. 2-4; Comments of Small Market Broadcasters, pp. 2-5; Comments of Entercom Communications Corporation, pp. 4-5;

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Comments of Viacom, Inc. p. 4; Comments of Next Media, Inc., p. 2; Comments of Citadel Communications Corporation, p. 21; and Comments of West Virginia Radio Corporation, p. 11.

Yesterday, March 12, 2001, the FCC apparently got the message -- or at least part of it -- when the Mass Media Bureau, at Chairman Powell's direction, approved some 32 transactions which complied fully with the multiple ownership rules mandated by Congress. Action on these applications had been delayed as long as two years while the staff conducted a case by case review of competitive factors that Congress had clearly put beyond the FCC's power to consider. As Chairman Powell acknowledged, the FCC "struggled" for three years "to find a legally sustainable basis for disposing of these cases [but] has been unable to do so" Statement of Chairman Michael K. Powell, *Re: Disposition of Applications for the Transfer of Control of Certain Radio Licenses*, March 12, 2001. Commissioner Furchgott-Roth less delicately described the process as "the arbitrary decisions of a bureau in an agency unanswerable to any authority but its own." Statement of Commissioner Harold W. Furchgott-Roth, *Mass Media Bureau Approval of Various Radio License Transfer Applications*, March 12, 2001.

Consistency requires, therefore, that in this proceeding, the FCC should resolve, as it has concluded with the case-by-case review process, to refrain from chipping away at the limits of the agency's authority imposed by Congress in the name of competition, administrative convenience or the amorphous "public interest" standard. As the issue was expressed by Commissioner Furchgott-Roth,

When Congress set the numerical limits in the Act for local ownership, it made a specific, predictive judgment about how many stations any one person could own in a particular market. Clearly, Congress felt these limits were sufficient to protect the broadcast policies of diversity and competition. The Commission has no power to second-guess or to undermine those judgments and may not use its generalized authority under Section 310 to nullify these specific considered Congressional judgments.

Statement of Commissioner Furchgott-Roth, March 12, 2001, *supra*.

Commenters in this proceeding who did not expressly challenge the FCC's authority to adopt the proposed changes showed, nonetheless, how such changes would be contrary to the public interest. One such party was Brill Media Company ("Brill"). Brill, although not mentioned in its comments, is the licensee of an AM station and an FM station in the Grand Junction, Colorado, radio market, where MBC Grand and Cumulus collectively account for 80 percent or more of radio advertising revenue. As shown in MBC Grand's Comments, pp. 3-4, some of the proposals in the *NPRM* could have the effect of "shrinking" the Grand Junction market and reducing the number of stations any single entity could own, operate or control. Notwithstanding the current division of the Grand Junction market, Brill urges the FCC to leave the definition of radio markets unchanged:

The existing rules have permitted the major radio station consolidators to consolidate aggressively in all markets under these rules. It would be grossly unfair to now protect them and *make it more difficult for other operators to try to achieve a comparable consolidation in a market in order to compete effectively.*

Brill Comments, p. 1 (emphasis supplied).

Various parties, including some who argued that the proposed changes are unlawful, urged the FCC, if it does nonetheless change the definition of radio markets, to "grandfather" existing station groups and permit free transferability of existing groups to

a single buyer. E.g., NAB Comments, pp. 29-31; Cumulus Comments, pp. 8-9; Clear Channel Comments, pp. 8-9; Small Market Broadcasters Comments, pp. 708; Entercom Comments, p. 9; Viacom Comments, p. 7. Citadel Comments, pp. 12-13.

Grandfathering, however, is not the answer. Much as the *NPRM* reflects a fear that a single rule may not apply to all circumstances with equal effectiveness, grandfathering, even assuming the ability to transfer all stations in an existing group to a single buyer, would not eliminate all potential adverse effects the FCC's proposals are likely to have on licensee exit strategies, particularly in small and medium-sized markets.

Although conventional wisdom says that, because of economies of operation, stations are more valuable as a group than individually, it is conceivable that in some circumstances the whole is worth less than the sum of the parts. If an existing group controls, say, more than 50 percent of the revenue in a small or medium-sized market, it is possible that another group's bloc of five or six stations would have more value if sold in pieces to other operators already in the market. MBC Grand's Comments (p. 3) showed that certain of the proposals in this proceeding could affect the ability of operators who already own stations in the Grand Junction market to acquire even a substantial majority of MBC Grand's current group of three FM stations and two AM stations. This scenario is not far-fetched. In early 2000, Mustang Broadcasting Company, licensee of two AM stations and two FM stations in the Grand Junction market, sold one AM and one FM to Cumulus and one AM and one FM to MBC Grand. The existing definition of the Grand Junction market for purposes of the multiple ownership rules precluded either Cumulus or MBC Grand from acquiring all of the Mustang stations. Some of the changes proposed

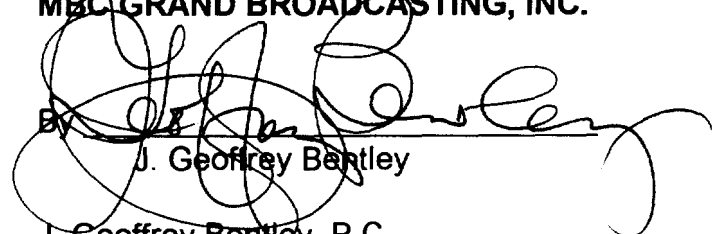
in the *NPRM* would have prevented virtually *any* operator in the Grand Junction market -- not just two of them -- from acquiring all of the stations. In other words, the proposed changes, if in effect in 1999, would have decreased the number of potential in-market bidders for Mustang's stations, or otherwise affected the terms on which many in-market operators could bid.

The comments show, conclusively, that the changes proposed in the *NPRM* are contrary to the express intention of Congress. If, in contravention of clear legislative intent, the FCC adopts those changes, the handful of perceived "anomalies" the FCC seeks to address will be exchanged for a new set of anomalies and, worse, inequities.

For the foregoing reasons, the FCC should terminate this proceeding without making any change in the definition of radio markets for purposes of the multiple ownership rules.

Respectfully submitted,

MBC GRAND BROADCASTING, INC.


By _____
J. Geoffrey Bentley

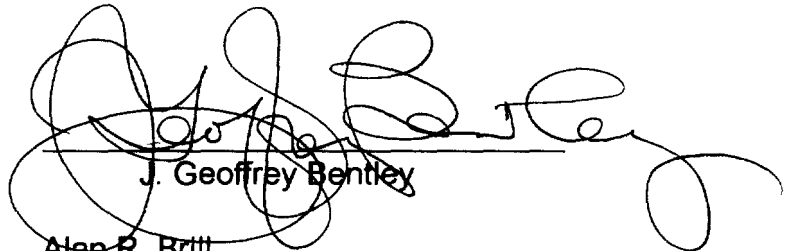
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March 13, 2001

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Reply Comments to be served this 13th day of March 2001, by first-class United States mail, postage prepaid, on the persons listed below.



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